



Tolga R Yalkin
Office of the Parliamentary Budget Officer
Library of Parliament
50 O'Connor, Suite 919
Ottawa ON K1P 6L2
Telephone: 613-797-5698
Fax: 613-947-8480

November 21, 2012

Judicial Administrator
Federal Court
333 Laurier Ave W
Ottawa ON K1P 1C1

Dear Judicial Administrator:

This letter concerns the attached application.

Given the urgency with which a decision needs to be reached on this issue to allow the Parliamentary Budget Officer to know whether or not he has jurisdiction to conduct the requested analyses for the Senate and House of Commons, counsel requests that the *ex parte* motion be set down for hearing as soon as possible.

Counsel is available on the following dates: Nov 29 and 30, Dec 3, 4, 5, 6, and 8, and Jan 3, 4, 7, 8, 9, 10, and 11. Counsel also requests that, pursuant to Rule 32, the hearing be held by teleconference.

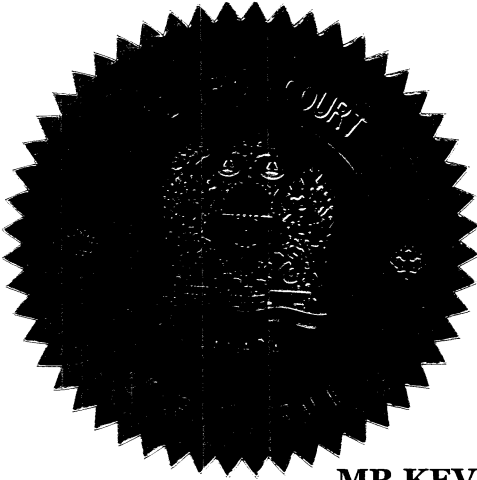
As a courtesy, counsel has copied the Attorney General to this correspondence and attached all documents filed with the court.

Many thanks

A handwritten signature in black ink, consisting of a large, stylized 'T' and 'Y' that loops around.

Tolga R Yalkin for Joseph Magnet

Attachments
c.c.: Attorney General of Canada



Court File No.: 1-2096-12

FEDERAL COURT

MR KEVIN PAGE, PARLIAMENTARY BUDGET OFFICER

Applicant

and

MR THOMAS MULCAIR, LEADER OF THE OPPOSITION

Respondent

NOTICE OF APPLICATION

UNDER SECTION 18.3 OF THE *FEDERAL COURTS ACT* RSC 1985, C F-7

Joseph Magnet
Barrister and Solicitor
LSUC #19386E
c/o Tolga Yalkin
Office of the Parliamentary Budget Officer
Library of Parliament
50 O'Connor, Suite 919
Ottawa, ON K1P 6L2
Telephone: 613-797-5698
Fax: 613-947-8480
email: tyalkin@ottawa.ca
email: jmagnet@uottawa.ca

TO: Thomas Mulcair
Leader of the Official Opposition
House of Commons
Ottawa ON K1A 0A6

AND TO Attorney General of Canada
Justice Building
Kent and Wellington Streets
Ottawa ON K1A 0H8

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: November 21, 2012

Issued by: _____

(Registry Officer)

ANN F. MURPHY
REGISTRY OFFICER
AGENTE DU GREFFE

Address of local office:

Registries of the Federal Courts
 Thomas D'Arcy McGee Building
 90 Sparks Street, 5th floor
 Ottawa, Ontario
 K1A 0H9

I HEREBY CERTIFY that the above document is a true copy of the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au Greffe de la Cour fédérale.

Filing date

Date de dépôt

NOV 21 2012

Dated
 Fait le

ANN F. MURPHY
REGISTRY OFFICER
AGENTE DU GREFFE

APPLICATION

This is an application for a reference by the Parliamentary Budget Officer to refer the following questions of law and jurisdiction to the Federal Court for hearing and determination:

1. Whether it is within the Parliamentary Budget Officer's jurisdiction, pursuant to *Parliament of Canada Act* RSC 1985, c P-1, Section 79.2, to analyze:
 - a. the extent to which the fiscal savings that are outlined in the Government's Budget are achievable or likely to be achieved; and
 - b. the extent to which the achievement of the savings there outlined would result in fiscal consequences in the longer term,
2. Whether it is within the Parliamentary Budget Officer's jurisdiction pursuant to *Parliament of Canada Act* RSC 1985, c P-1, Section 79.3, to request from departments their planned fiscal savings premised on staffing reductions

The grounds for the application are:

1. *Federal Courts Act* RSC 1985, c F-7, Section 18.3(1).
2. *Federal Courts Act* RSC 1985, c F-7, Section 18.4(1).
3. *Parliament of Canada Act* RSC 1985, c P-1, Section 79.2, which mandates the Parliamentary Budget Officer to provide independent analysis to the Senate and to the House of Commons about the state of the nation's finances, the estimates of the government, and trends in the national economy.

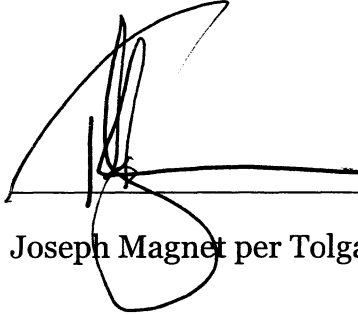
4. *Parliament of Canada Act* RSC 1985, c P-1, Section 79.3(1), which provides that the Parliamentary Budget Officer is entitled to request from deputy heads of government departments free and timely access to any financial or economic data in the possession of the department required for the discharge of his mandate.
5. The Leader of the Official Opposition asked the Parliamentary Budget Officer to provide specific analyses of the Estimates of the Government to the Senate and the House of Commons.
6. The Parliamentary Budget Officer responded explaining that he was unclear as to whether he had jurisdiction to undertake the required analyses and that he did not have the information he would need to undertake the required analyses.
7. The Leader of the Official Opposition responded, requiring that the Parliamentary Budget Officer obtain the information, conduct the analyses, and provide the analyses to the Senate and House of Commons.
8. The Parliamentary Budget Officer responded explaining that questions had been raised as to whether he had jurisdiction to request such types of information and that he would seek clarity on the scope of his jurisdiction to undertake the analyses and request the information.

This application will be supported by the following material:

1. Affidavit of Ms. Patricia Brown, Administrative Coordinator to the Parliamentary Budget Officer, with attached exhibits; and

2. Such further and additional materials as counsel may advise and this Honourable Court permit.

November 21, 2012



Joseph Magnet per Tolga Yalkin

Address for service:
c/o Tolga Yalkin
Parliamentary Budget Officer
Library of Parliament
50 O'Connor, Suite 919
Ottawa, ON K1P 6L2
Telephone: 613-797-5698
Fax: 613-947-8480
email: tyalkin@uottawa.ca
email: jmagnet@uottawa.ca

RECEIVED - RHQJ

2012 NOV 21 A 9:42

City of Ottawa
OTTAWA, ON

Court File No.: T-2096-12

FEDERAL COURT

BETWEEN:

MR KEVIN PAGE, PARLIAMENTARY BUDGET OFFICER

**Applicant
(Moving Party)**

and

MR THOMAS MULCAIR, LEADER OF THE OPPOSITION

**Respondent
(Responding Party)**

EX PARTE MOTION RECORD

**Joseph Magnet
Barrister and Solicitor
LSUC #19386E
c/o Tolga R Yalkin
Office of the Parliamentary Budget Officer
Library of Parliament
50 O'Connor, Suite 919
Ottawa, ON K1P 6L2
Telephone: 613-797-5698
Fax: 613-947-8480
Email: tyalkin@uottawa.ca
Email: jmagnet@uottawa.ca**

Court File No.: _____

FEDERAL COURT

BETWEEN:

MR KEVIN PAGE, PARLIAMENTARY BUDGET OFFICERApplicant
(Moving Party)

and

MR THOMAS MULCAIR, LEADER OF THE OPPOSITIONRespondent
(Responding Party)

TABLE OF CONTENTS

<u>Tab</u>		<u>Pages</u>
1	Notice of Motion	1-3
2	Affidavit of Patricia Brown	4-9
3	Written Submissions	10-13
4	Draft Order	14-16

Court File No.: _____

FEDERAL COURT

BETWEEN:

MR KEVIN PAGE, PARLIAMENTARY BUDGET OFFICER

Applicant

and

MR THOMAS MULCAIR, LEADER OF THE OPPOSITION

Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the Applicant will make an *ex parte* motion to the Court on a date set by the Court as soon as the motion can be heard, for a period of 30 minutes, by teleconference pursuant to Rule 32.

THIS MOTION IS FOR an Order pursuant to Rule 322 of the Federal Court Rules, in relation to a reference to this Honourable Court by the Parliamentary Budget Officer, pursuant to Section 18.3 of the *Federal Courts Act*, concerning his jurisdiction to undertake certain analyses and request certain information, as to:

- a) which persons shall be given notice of the reference;
- b) the material that will constitute the case to be determined on the reference;
- c) the preparation, filing and service of copies of the material;
- d) the preparation, filing and service of memoranda of fact and law;
- e) the procedure for the hearing of the reference;
- f) the time and place for the hearing of the reference; and
- g) the role, if any, of the Applicant.

THE GROUNDS FOR THE MOTION ARE:


1. The Applicant is bringing a reference to the Federal Court for determination of the jurisdiction of the Parliamentary Budget Officer to:
 - a. analyze:
 - i. the extent to which the fiscal savings that are outlined in the Government's Budget are achievable or likely to be achieved; and
 - ii. the extent to which the achievement of the savings there outlined would result in fiscal consequences in the longer term, and
 - b. request from departments their planned fiscal savings premised on staffing reductions.
 - c. *Federal Courts Act* RSC 1985, c F-7, Section 18.3(1).

d. *Federal Courts Act* RSC 1985, c F-7, Section 18.4(1).

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Patricia Brown, sworn November 21, 2012;
2. Such further and additional materials as counsel may advise and this Court permit.

Date: November 21, 2012



Joseph Magnet per Tolga R Yalkin
Barrister and Solicitor
LSUC #19386E

c/o Tolga R Yalkin
Office of the Parliamentary Budget Officer
Library of Parliament
50 O'Connor, Suite 919
Ottawa, ON K1P 6L2
Telephone: 613-797-5698
Fax: 613-947-8480
Email: tyalkin@uottawa.ca
Email: jmagnet@uottawa.ca

Court File No.: _____

FEDERAL COURT

BETWEEN:

MR KEVIN PAGE, PARLIAMENTARY BUDGET OFFICER

Applicant

and

MR THOMAS MULCAIR, LEADER OF THE OPPOSITION

Respondent

AFFIDAVIT

I, PATRICIA BROWN, Administrative Coordinator at the Office of the
Parliamentary Budget Officer, of the City of Ottawa in the Province of Ontario, SWEAR
THAT:

1. I am the Administrative Coordinator at the Office of the Parliamentary Budget Officer and have been so since 2008. As such, I have knowledge of records of correspondence received by and sent from the Parliamentary Budget Officer.
2. On November 13, 2012, the Parliamentary Budget Officer received a letter from the Honourable Thomas Mulcair, Leader of the Official Opposition. I have attached this letter to this, my affidavit, as "Exhibit A".
3. On November 14, 2012, the Parliamentary Budget Officer responded to Mr Mulcair's letter. I have attached this letter to this, my affidavit, as "Exhibit B".
4. On November 16, 2012, the Parliamentary Budget Officer received a further letter from Mr Mulcair. I have attached this letter to this, my affidavit, as "Exhibit C".
5. On November 19, 2012, the Parliamentary Budget Officer responded to Mr Mulcair's letter. I have attached this letter to this, my affidavit, as "Exhibit D".

Date: November 21, 2012

Patricia Brown

Patricia Brown

Sworn/Affirmed before me in Quebec, on the
21 day of November 2012

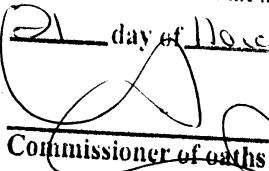
Commissioner of Oaths

ANN F. MURPHY
REGISTRY OFFICER
AGENTE DU GREFFE

This is Exhibit "A" referred to in the
affidavit of Patricia Brown sworn in
Ottawa on November 21, 2012

Sworn/Affirmed before me in C.A.W.C., on the

21 day of November 2012


Commissioner of oaths

ANN F. MURPHY
REGISTRY OFFICER
AGENTE DU GREFFE

CHEF DE L'OPPOSITION OFFICIELLE
NOUVEAU PARTI DÉMOCRATIQUE DU CANADA



LEADER OF THE OFFICIAL OPPOSITION
NEW DEMOCRATIC PARTY OF CANADA

*Thomas Mulcair, Député/M.P.
Outremont*

Parliamentary Budget Officer

NOV 13 2012

Directeur parlementaire
du budget

November 8, 2012

Kevin Page
Parliamentary Budget Officer
Room 908, 50 O'Connor Street
Ottawa, ON K1A 0A9

Dear Mr. Page:

I want to thank you very much for the analysis you have recently provided in your report entitled, "Budget 2012: Monitoring Framework Update".

Despite this very important contribution, much analysis remains to be provided. In order for parliamentarians to do their job of voting supply and holding the government to account, they need adequate analyses of the Estimates. These analyses include the fiscal risks and consequences posed by the cuts outlined in Budget 2012. As such, I require your analyses as to:

- whether the savings that are outlined in Budget 2012 are achievable or likely to be achieved. (This will, of course, require you to analyse, as a condition precedent, how these savings are proposed to be achieved, i.e. by "efficiencies" or actual reductions in services to Canadians.); and,
- whether and the extent to which the failure to achieve them would result in fiscal consequences in the longer term (e.g. deferred capital maintenance resulting in the requirement to replace an asset).

These analyses are among the major reasons your office was created. As such, I would be very grateful if you provided them to the House and the Senate as soon as possible.

Sincerely,

Thomas Mulcair

Thomas Mulcair, M.P. (Outremont)
Leader of the Official Opposition
New Democratic Party of Canada

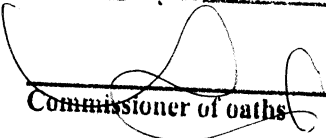
OTTAWA
House of Commons / Chambre des communes
Ottawa, Ontario K1A 0A6
Tel./Tél.: 613-995-7224
Fax/Télec.: 613-995-4565

thomas.mulcair@parl.gc.ca
www.ndp.ca

OUTREMONT
3333, chemin Queen-Mary, Bureau 310
Montréal (Québec) H3V 1A2
Tél./Tel.: 514-736-2727
Télec./Fax: 514-736-2726

This is Exhibit "B" referred to in the
affidavit of Patricia Brown sworn in
Ottawa on November 21, 2012

Sworn/Affirmed before me in Ottawa, on the
21 day of November 2012



Commissioner of oaths

ANN F. MURPHY
REGISTRY OFFICER
AGENTE DU GREFFE

OFFICE OF
THE PARLIAMENTARY BUDGET OFFICER



BUREAU DU
DIRECTEUR PARLEMENTAIRE DU BUDGET

November 14, 2012

The Honourable Thomas J. Mulcair, M.P.
Leader of the Official Opposition
New Democratic Party of Canada
House of Commons
Centre Block
Room 409-S
Ottawa, ON K1A 0A6

Dear Mr. Mulcair:

Thank you for your letter.

Questions have been raised as to whether the analyses you require fall within my mandate. Further, at a minimum, to conduct these analyses, I would need to know the departmental savings premised on staffing reductions.

Yours truly,

A handwritten signature in black ink, appearing to read "Kevin Page".

for Kevin Page
Parliamentary Budget Officer

This is Exhibit "C" referred to in the
affidavit of Patricia Brown sworn in
Ottawa on November 21, 2012

Sworn/Affirmed before me in Ottawa on the
21 day of November 2012


Commissioner of oaths

ANN F. MURPHY
REGISTRY OFFICER
AGENTE DU GREFFE

CHEF DE L'OPPOSITION OFFICIELLE
NOUVEAU PARTI DÉMOCRATIQUE DU CANADA



LEADER OF THE OFFICIAL OPPOSITION
NEW DEMOCRATIC PARTY OF CANADA

Thomas Mulcair, Député/M.P.
Outremont

November 15, 2012

Kevin Page
Parliamentary Budget Officer
Room 908, 50 O'Connor Street
Ottawa, ON K1A 0A9

Dear Mr. Page:

Thank you for your response.

As you are aware, parliamentarians have an obligation to scrutinize the spending plans of the Government. In order to do this, they require and are entitled to your analyses on the Estimates.

If you need departmental savings premised on staffing reductions to perform these analyses, please request that data from departments, perform the analyses we require, and publish it.

Sincerely,

Thomas Mulcair, M.P. (Outremont)
Leader of the Official Opposition
New Democratic Party of Canada

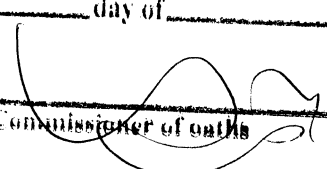
OTTAWA
House of Commons / Chambre des communes
Ottawa, Ontario K1A 0A6
Tel./Tél.: 613-995-7224
Fax/Télec.: 613-995-4565

thomas.mulcair@parl.gc.ca
www.ndp.ca

OUTREMONT
3333, chemin Queen-Mary, Bureau 310
Montréal (Québec) H3V 1A2
Tél./Tel.: 514-736-2727
Télec./Fax: 514-736-2726

This is Exhibit "D" referred to in the
affidavit of Patricia Brown sworn in
Ottawa on November 21, 2012

Sworn/Affirmed before me in Ottawa, on the
_____ day of _____ 20____



Commissioner of Oaths

**ANN F. MURPHY
REGISTRY OFFICER
AGENTE DU GREFFE**

OFFICE OF
THE PARLIAMENTARY BUDGET OFFICER



BUREAU DU
DIRECTEUR PARLEMENTAIRE DU BUDGET

November 19, 2012

The Honourable Thomas J. Mulcair, M.P.
Leader of the Official Opposition
New Democratic Party of Canada
House of Commons
Centre Block
Room 409-S
Ottawa, ON K1A 0A6

Dear Mr. Mulcair:

Thank you for your letter.

As you may be aware, in addition to whether I have jurisdiction to conduct these analyses, questions have been raised as to whether I have jurisdiction to request this type of data.

Before I make any decision about whether to accede to your demand, I will need clarification as to whether I have jurisdiction both to conduct the required analyses and request the data necessary to perform the analyses.

I will, therefore, seek a reference from the Federal Court on the matter, asking:

(1) whether it is within my jurisdiction to analyze:

- a. the extent to which the fiscal savings that are outlined are achievable or likely to be achieved; and
- b. the extent to which the answer(s) to (a) would result in fiscal consequences in the longer term, and

(2) whether it is within my jurisdiction to request departments to provide me with their fiscal savings premised on staffing reductions by program activity.

If the Court decides that I do not have jurisdiction to perform the analysis you require, it will not be performed and the data will not be requested. If the Court decides that I have jurisdiction to perform the analysis you require and request the necessary data, I will ask for the data and, when provided with it, endeavour to produce the analysis.

Yours truly,

Kevin Page
Parliamentary Budget Officer

Court File No.: _____

FEDERAL COURT

BETWEEN:

MR KEVIN PAGE, PARLIAMENTARY BUDGET OFFICER

Applicant

and

MR THOMAS MULCAIR, LEADER OF THE OPPOSITION

Respondent

WRITTEN SUBMISSIONS

1. The Parliamentary Budget Officer (the "Applicant") seeks directions from the Court pursuant to Rule 322 of the *Federal Court Rules*.
2. The directions are for the reference the Applicant brings before this Honourable Court.
3. The Applicant is an Officer of the Library of Parliament. He is mandated to "provide independent analysis to the Senate and to the House of Commons about

the state of the nation's finances, the estimates of the government and trends in the national economy."

Parliament of Canada Act RSC 1985, c P-1, Sections 79.1 and 79.2

4. In addition, he "is entitled, by request made to the deputy head of a department [...] to free and timely access to any financial or economic data in the possession of the department that are required for the performance of his or her mandate."

Parliament of Canada Act RSC 1985, c P-1, Sections 79.3

5. The Parliamentary Budget Officer was requested by the Leader of the Official Opposition to provide specific analyses of the Estimates of the Government to the Senate and the House of Commons.
6. The Parliamentary Budget Officer responded explaining that he was unclear as to whether he had jurisdiction to undertake the required analyses and that he did not have the information he would need to undertake the requested analyses.
7. The Leader of the Official Opposition responded, requiring that the Parliamentary Budget Officer obtain the information, conduct the analyses, and provide the analyses to the Senate and House of Commons.
8. The Parliamentary Budget Officer responded explaining that questions had been raised as to whether he had jurisdiction to request such types of information and that he would seek clarity on the scope of his jurisdiction to undertake the analyses and request the information.

9. The Applicant seeks the advice of this Honourable Court regarding whether it is within the Parliamentary Budget Officer's jurisdiction to analyze:

- a. the extent to which the fiscal savings that are outlined in the Government's Budget are achievable or likely to be achieved; and
- b. the extent to which the achievement of the savings there outlined would result in fiscal consequences in the longer term.

Parliament of Canada Act RSC 1985, c P-1. Section 79.2

10. The Applicant seeks the advice of this Honourable Court regarding whether it is within the Parliamentary Budget Officer's jurisdiction to request from departments their planned fiscal savings premised on staffing reductions.

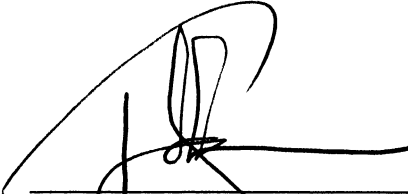
Parliament of Canada Act RSC 1985, c P-1. Section 79.3

11. The Applicant seeks directions, pursuant to Rule 322, as to:

- a. which persons shall be given notice of the reference;
- b. what material will constitute the case to be determined on the reference;
- c. the preparation, filing and service of copies of that material;
- d. the preparation, filing and service of memoranda of fact and law;
- e. the procedure for hearing of the reference;
- f. the time and place for the hearing of the reference; and

g. the role of the Parliamentary Budget officer.

Date: November 21, 2012



Joseph Magnet per Tolga R Yalkin
Barrister and Solicitor
LSUC #19386E

c/o Tolga R Yalkin
Office of the Parliamentary Budget Officer
Library of Parliament
50 O'Connor, Suite 919
Ottawa, ON K1P 6L2
Telephone: 613-797-5698
Fax: 613-947-8480
Email: tyalkin@uottawa.ca
Email: jmagnet@uottawa.ca

Court File No.: _____

FEDERAL COURT

BETWEEN:

MR KEVIN PAGE, PARLIAMENTARY BUDGET OFFICER

Applicant

And

MR THOMAS MULCAIR, LEADER OF THE OPPOSITION

Respondent

ORDER

UPON MOTION by the Applicant for an order pursuant to Rule 322 of the *Federal Court Rules* as to:

- (a) which persons shall be given notice of the reference;
- (b) the material that will constitute the case to be determined on the reference;
- (c) the preparation, filing and service of copies of the material;
- (d) the preparation, filing and service of memoranda of fact and law;

(e) the procedure for the hearing of the reference;

(f) the time and place for the hearing of the reference; and

(g) the role, if any, of the tribunal in question.

AND UPON reading the motion record of the applications and hearing the submission of counsel for the Applicant and Respondent at the Court's general sitting in Ottawa on (date);

AND UPON the Applicant and Respondent agreeing to the terms of this order;

THIS COURT ORDERS that:

1. Notice of reference shall be given to the Attorney General of Canada by serving him with a copy of this order and with copies of the other documents later referred to in this order within one week of the issuance of this order.
2. The material that will constitute the case to be determined by the reference shall consist of the affidavit of Patricia Brown sworn November 21, 2012.
3. The Applicant shall serve and file his memorandum of fact and law within one week of the issuance of this order.
4. The Respondents shall each serve and file their memoranda and fact of law within one week of receiving the Applicant's memorandum of fact and law.
5. The Reference shall be heard at Ottawa on the ____ day of December, 2012.
6. The Applicant shall have carriage of the Reference and participate in the hearing.

7. In the event that further directions are required, any party may direct correspondence to the Registry of the Court, requesting that such correspondence be directed to Justice _____.